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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

RIANA BUFFIN and CRYSTAL  
PATTERSON, on behalf of themselves and  
others similarly situated,

Plaintiffs,

v.

VICKI HENNESSY in her official capacity  
as the San Francisco Sheriff, *et al.*,

Defendants.

CASE NO. 4:15-cv-04959-YGR

**NOTICE OF AGREEMENT AND  
PROPOSED ORDER REGARDING  
PLAINTIFFS' ATTORNEYS' FEES AND  
COSTS PURSUANT TO 42 U.S.C. § 1988**

1 Plaintiffs and Defendant the San Francisco Sheriff are pleased to inform the Court that, in  
 2 an effort to avoid additional motion practice in this case, they have reached agreement as to the  
 3 appropriate award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988. Because this case  
 4 involves a certified class, the parties present a brief description of the relevant issues below, and  
 5 present the Proposed Order Awarding Attorneys' Fees and Costs, attached as **Exhibit A**, for the  
 6 Court's approval.

7 **I. The Parties' Agreed-Upon Award for Attorneys' Fees and Costs**

8 After four years of litigation, Plaintiffs achieved an order from this Court granting  
 9 summary judgment and finding that "the Sheriff's use of the Bail Scheduled significantly  
 10 deprive[d] plaintiffs of their fundamental right to liberty, and a plausible alternative exist[ed]  
 11 which [wa]s at least as effective and less restrictive for achieving the government's compelling  
 12 interests in protecting public safety and assuring future court appearances." Dkt. 314 at 40. And  
 13 following substantial negotiations between Plaintiffs and the Sheriff regarding a resolution as to  
 14 the appropriate judgment and injunction to remedy the Constitutional violation found, the Court  
 15 "enjoined [the Sheriff] from using the Bail Schedule, or any form or derivative thereof," and  
 16 imposed an injunction securing "release [of an] arrestee at eighteen (18) hours from the time of  
 17 booking if [] the Superior Court has not rendered a decision on OR release at that time" and other  
 18 criteria are met. Dkt. 372 at 2–3.

19 Having obtained relief that "material[ly] alter[ed] [] the legal relationship of the parties,"  
 20 Plaintiffs are prevailing parties. *Buckhannon Bd. & Care Home v. W. Va. Dep't of Health &*  
 21 *Human Res.*, 532 U.S. 598, 601, 604 (2001).

22 Counsel from Equal Justice Under Law (who researched and initiated this action) and class  
 23 counsel from Latham & Watkins have spent a combined total of over 8,000 hours litigating this  
 24 case since its inception, including through motions to dismiss, motions to intervene, two rounds of  
 25 discovery, trial preparations, two summary judgment motions, and ultimately a highly negotiated  
 26 relief stage. In particular, the time devoted to this matter reflected that fact that the case involved  
 27 (1) substantial early motion practice; (2) intervention by the California Bail Agents Association,  
 28 which aggressively defended the case after the San Francisco Sheriff, the sole remaining

government defendant, elected not to defend the constitutionality of the San Francisco Bail Schedule; (3) two rounds of extensive fact and expert discovery; (4) trial preparation up to the eve of trial; (5) renewed summary judgment briefing; and (6) an extensive relief stage, which required designing a heavily negotiated constitutional pretrial release system.

Were Plaintiffs to seek full payment for all hours spent on this case at their customary rates, the total fees charged would be \$6,136,120.28. Even had the parties agreed to lower rates, for example, the *Laffey* matrix<sup>1</sup> which has been used as an approximation of reasonable attorneys' fees in similar matters (though certainly not a ceiling), the combined fees charged would be \$3,360,725.37. Counsel have also incurred significant out-of-pocket costs over the course of this litigation, totaling at least \$157,449.77. Nevertheless, the parties have agreed that a total settlement, encompassing both attorneys' fees and costs of **\$1,950,000** is a reasonable award in this matter. This settlement figure represents a 42% reduction from the total calculated under the *Laffey* matrix rates and a 68% reduction of the total calculated using full market rates.

The parties agree that this substantially discounted sum is reasonable both in light of the substantive and procedural complexities involved in litigating this case and because of the relief obtained on behalf of the class. The amount will also adequately cover all of Plaintiffs' out-of-pocket costs.

Consistent with its general practice in pro bono engagements, upon the receipt of an award of fees and costs, Latham & Watkins intends to cover its costs and donate the full amount of attorneys' fees it receives in support of public interest causes.

## **II. Payment of the Award**

The Sheriff was sued in this case solely in her official capacity. Dkt. 71. An official-capacity suit is treated as one against the governmental entity of which the official is an agent. *Kentucky v. Graham*, 473 U.S. 159, 166 (1985); *Pistor v. Garcia*, 791 F.3d 1104, 1112 (9th Cir.

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<sup>1</sup> See USAO Attorney's Fees Matrix – 2015-2019, <https://www.justice.gov/usao-dc/file/796471/download> (last accessed Nov. 18, 2019). The *Laffey* Matrix has been used as an approximation of reasonable attorneys' fees in similar matters, but it is not the ceiling, and courts in this District have found hourly rates costlier than those provided for in the *Laffey* matrix to be reasonable. See, e.g., *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 454 (9th Cir. 2010); *GemCap Lending I, LLC v. Unity Bank Minnesota*, No. 18-CV-05979-YGR, 2019 WL 3842010, at \*5 (N.D. Cal. Aug. 15, 2019).

2015) (“official capacity suits ultimately seek to hold the entity of which the officer is an agent liable, rather than the official himself”). Because the Sheriff was acting as a State actor in enforcing the Bail Schedule in accordance with State law, *see* Dkt. 99 at 15, an award of attorneys’ fees and costs under 42 U.S.C. § 1988 operates as a charge against the State of California.<sup>2</sup> *See Hutto v. Finney*, 437 U.S. 678, 693–94 (1978) (fee awards are “payable by the States when their officials are sued in their official capacities.”); *Echols v. Parker*, 909 F.2d 795, 797 (5th Cir. 1990) (finding county officials are state actors and awarding fees against the state where their actions were “more comparable to the duty of a county sheriff in enforcing a state law than to any county administrative decision or policy implementation.”) (internal quotation marks omitted); *McGee v. Cole*, 115 F.Supp.3d 765, 773 (S.D. W.Va. 2015) (if the clerks were sued for enforcing state law, any fees are “to be paid by the State of West Virginia”); *Veasey v. Wilkins*, No. 5:14-CV-369-BO, 2015 WL 4622694, at \*3 (E.D.N.C. July 31, 2015) (where Sheriff was following state law, any fees awarded must be paid by the State of North Carolina); *Laudermilk v. Fordice*, No. CIV. A.1:95CV161-D-D, 1997 WL 786776, at \*12 (N.D. Miss. Nov. 14, 1997) (award charged to the State of Mississippi when county officials were pursuing their duties as state agents); *Herbst v. O’Malley*, No. 84 C 5602, 1995 WL 55252, at \*9 (N.D. Ill. Feb. 8, 1995), *aff’d sub nom. Herbst v. Ryan*, 90 F.3d 1300 (7th Cir. 1996) (finding that Illinois State’s Attorneys are state officials when sued in their official capacity in an action to enjoin the enforcement of an unconstitutional state statute, and consequently ordering the State of Illinois to pay Plaintiffs’ attorneys’ fees). An award of attorneys’ fees and costs under § 1988 is properly directed against the State, “even though the State or one of its departments was not named as a party.” *Spain v. Mountanos*, 690 F.2d 742, 744 (9th Cir. 1982) (citing *Hutto v. Finney*, 437 U.S. at 700).

Though initially named in this litigation, the Court dismissed the California Attorney General because “the Sheriff is the actor responsible for enforcing the challenged state law.” Dkt. 99 at 20. The Attorney General never took any issue with the Sheriff being held to be the state actor with respect to these issues. Moreover, when the Sheriff declined to defend the

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<sup>2</sup> At the time, then-Attorney General Kamala Harris agreed that the Sheriff was the party who “enforce[es] California Penal Code section 1269b” and therefore was acting on behalf of the state. Dkt. 77 at 6–7.

1 constitutionality of the State law, the Attorney General informed Plaintiffs' counsel that she might  
2 seek to intervene to defend the State law at issue, but ultimately declined to do so (*see* Dkts. 105,  
3 109).

4 Because the Sheriff is the relevant state actor in this litigation as found by the Court—and  
5 in fact, the only remaining defendant—the Sheriff is fully authorized to enter into this settlement.  
6 Nevertheless, because the State is ultimately the entity obliged to pay the award of fees and costs  
7 under § 1988, the City Attorney's Office reached out to the Office of the Attorney General and  
8 invited them to join the parties' negotiations regarding an agreement regarding Plaintiffs' award  
9 of fees and costs. The Office of the Attorney General declined to participate, but apparently does  
10 not believe that the State is responsible for the payment of a fees award.

11 In these circumstances, the parties believe there is no legal impediment to this Court's entry  
12 of the attached Proposed Order. Nevertheless, we will separately email this filing to Jose A  
13 Zelidon-Zepeda, Maria Otones, and Melissa Mendiola with the Office of the Attorney General.  
14 Each of these individuals is already on ECF notification for this case, but the separate delivery will  
15 further highlight the filing to afford the Attorney General one additional opportunity to seek to  
16 weigh in on this matter.

17 If the Court deems it appropriate, the parties would not oppose providing the Attorney  
18 General two weeks' notice on this final issue. However, if no submission is made within two  
19 weeks—by December 6, 2019—the parties jointly request that the Court enter the Proposed Order  
20 Awarding Attorneys' Fees and Costs at that time. To the extent the Attorney General seeks leave  
21 to be heard and the Court grants it, the parties request an opportunity to respond to any filing by  
22 the Attorney General.

23 Plaintiffs reserve all rights to enforce the award once entered by the Court. In addition,  
24 although Plaintiffs have reached an agreement with the Sheriff on a negotiated fee and cost award  
25 for purposes of avoiding motion practice, should the Office of the Attorney General seek to oppose  
26 this agreement and award for any purpose whatsoever, and the Court ultimately declines to enter  
27 the parties' proposed order, Plaintiffs reserve all rights to seek the larger, full amount of their  
28 reasonable attorneys' fees and costs, including an appropriate multiplier, recoverable under

42 U.S.C. § 1988 and prevailing law, and the Sheriff reserves all rights to oppose any application that Plaintiffs may submit, including concerning Plaintiffs' entitlement to any fee award.<sup>3</sup>

As always, we would be pleased to address any questions the Court may have.

Dated: November 22, 2019

Respectfully submitted,

LATHAM & WATKINS LLP

Robert E. Sims

Sadik Huseny

Tyler P. Young

By: /s/ Sadik Huseny

Sadik Huseny

*Attorneys for Plaintiffs*

*Riana Buffin and Crystal Patterson*

Dated: November 22, 2019

Respectfully submitted,

DENNIS J. HERRERA

City Attorney

By: /s/ Jeremy M. Goldman

Jeremy M. Goldman

*Attorneys for Defendant*

*Sheriff Vicki Hennessy*

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<sup>3</sup> In the interest of resolving this issue via stipulated agreement, Plaintiffs have to date declined to pursue a multiplier, even though the "novelty and difficulty of the questions presented," the "results obtained," the "contingent" nature of the fee, as well as other factors, *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975) justify a large multiplier. *See id.*; *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6 (9th Cir. 2002) (customary range for multipliers in common fund cases is between 1.0 and 4.0). Plaintiffs intend to pursue an appropriate multiplier should the Office of the Attorney General seek to oppose this agreement and award for any purpose whatsoever. The Sheriff disagrees that any multiplier would be appropriate and would oppose such a request.

**SIGNATURE ATTESTATION**

I, Sadik Huseny, am the ECF user whose ID and password are being used to file this Notice of Stipulated Final Judgment Remediating Constitutional Violation. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other Signatories.

Dated: November 22, 2019

/s/ Sadik Huseny  
Sadik Huseny